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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

EQUAL EMPLOYMENT OPPORTUNITY Case No.:
COMMISSION,

Plaintiff,

v.

COMPLAINT

NEW CHINA, INC.,

JURY TRIAL DEMAND

Defendant.

EEOC v. New China, Inc.
Complaint - 1

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NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and to provide appropriate relief to Charging Parties and similarly situated female employees who were adversely affected by such practices. The Equal Employment Opportunity Commission (EEOC or Commission) alleges that Defendant New China, Inc. subjected female employees to sexual harassment, retaliation, and constructive discharge. Plaintiff seeks monetary and injunctive relief for these female employees, including back pay plus prejudgment interest, pecuniary and nonpecuniary compensatory damages, and punitive damages.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sections 2000e-5(f)(1) and (3) (Title VII), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of Oregon.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) of Title VII, 42 U.S.C. §2000e-5(f)(1).

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4. At all relevant times, Defendant, New China, Inc. has continuously been doing business in the State of Oregon and has continuously had at least 15 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§2000e-(b), (g) and (h).

ADMINISTRATIVE PROCEDURES

6. More than thirty (30) days prior to the institution of this lawsuit, Charging Parties on Charge Numbers 38D-2018-00780C and 551-2019-01545C, on which this complaint is based, filed said charges with the EEOC/Oregon Bureau of Labor and Industries alleging violations of Title VII by Defendant.

7. On August 13, 2019, the Commission issued to Defendant Letters of Determination as to the above charges finding reasonable cause to believe Title VII was violated and inviting Defendant to join with the Commission in informal methods of conciliation to endeavor to eliminate the unlawful employment practices and to provide appropriate relief for the Charging Parties and similarly situated female employees.

8. The Commission engaged in communications with Defendant to provide Defendant the opportunity to remedy the discriminatory practices described in the Letter of Determination.

9. On November 4, 2019, the Commission issued to Defendant a Notice of Failure of Conciliation advising that the Commission was unable to secure from Defendant a conciliation agreement acceptable to the Commission.

10. All conditions precedent to the institution of this lawsuit have been fulfilled.

STATEMENT OF CLAIMS

11. Since at least July 2017, Defendant has engaged in unlawful employment practices at its Medford, Oregon restaurant facility, in violation of §§703(a) and 704 of Title VII, 42 U.S.C. § 2000e-2(a) and –e-3, by subjecting the Charging Parties and other female employees to a hostile work environment based on their sex, female, by retaliating against them, and subjecting them to constructive discharge.

12. The practices complained of in Paragraph 9 include but are not limited to the following:

- a. The restaurant manager repeatedly making sexual comments, sexual innuendos, and remarks to female employees.
- b. The restaurant manager repeatedly subjecting female employees to hugs.
- c. The restaurant manager repeatedly touching female employees' backs, shoulders, waist, hip/crotch area, buttocks, rubbing his body up against female employees' bodies, and standing close behind female employees and staring at them.
- d. The restaurant manager repeatedly touching the breasts of female employees including putting his hand under a female employee's shirt and bra.
- e. The restaurant manager pulling on the shirt and bra of a female employee in order to see the employee's nipple.
- f. The restaurant manager asking a female employee to send him naked photos of herself.
- g. A male employee video recording a female employee while she worked.

13. The offensive and unwelcome sexual conduct was open and notorious.

14. The offensive and unwelcome conduct was directed at young female employees including minors.

15. Defendant failed to take prompt or appropriate corrective action to prevent or remedy the hostile work environment caused by the offensive and unwelcome sexual conduct despite female employees reporting the offensive and unwelcome sexual conduct, the conduct being witnessed by the assistant manager, and the manager being arrested at work for sexually assaulting a female employee.

16. After complaining about offensive and unwelcome sexual conduct, Defendant retaliated against Charging Party on charge 551-2019-01545C by terminating her employment.

17. Defendant's failure to take prompt or appropriate corrective action made the working conditions for Charging Party on charge 38D-2018-00780C so intolerable that she felt forced to resign.

18. The effect of the practices complained of in paragraphs 11 through 17 above has been to deprive female employees of equal employment opportunities because of their sex, female.

19. The unlawful employment practices complained of in paragraphs 11 through 17 above were intentional.

20. The unlawful employment practices complained of above in paragraphs 11 through 17 were done with malice or with reckless indifference to the federally protected rights of the female employees.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, agents, assigns, and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of sex and retaliation.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for all employees, and which eradicate the effects of its past and present unlawful employment practices.

C. Order Defendant to make the female employees whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 11-17 above, including past and future out-of-pocket expenses, in amounts to be determined at trial.

D. Order Defendant to make the female employees whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraphs 11-17 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

E. Order Defendant to make the female employees whole by providing appropriate back pay with prejudgment interest in amounts to be determined at trial, and/or other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices described in paragraphs 11-17 above.

F. Order Defendant to pay the female employees punitive damages for its malicious and reckless conduct, as described in paragraphs 11-17 above, in amounts to be determined at

trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

DATED this 19th day of February, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

DATED this 19th day of February, 2020

/s/ Rebecca Eaton
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